

# STATE OF COLORADO

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Colorado Department  
of Public Health  
and Environment

To: Members of the State Board of Health

From: Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division

Through: D. Randy Kuykendall, MLS; Director *D.R.K.*

Date: August 20, 2014

Subject: Proposed Amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter II, General Licensure Standards, Part 5 Access to Patient Medical Records with a Request for the Rulemaking Hearing to occur on October 15, 2014

The Division is proposing an amendment to its rules regarding patient medical record copy costs in order to comply with House Bill 14-1186 and a directive from the Office of Legislative Legal Affairs.

In January of this year, the Board adopted changes to this section that consisted of striking language in section 5.2.3.4 regarding specific per page fees that licensed health facilities could charge patients or their representatives for copies of a patient's medical record. On the recommendation of the Division and the Office of the Attorney General, the Board struck the language regarding specific per page fees because the existing statute did not support the Board's authority to impose such fees.

At the time, the Division recommended keeping, but slightly rewording, existing language that no fees be charged by a health care provider for copies of patient records if those copies were being requested solely for the purposed of providing continuing medical care to a patient. The Division believed that this provision was necessary to protect the health, safety and welfare of patients in need of continuing medical care.

After the January 2014 amendments were adopted by the Board, the legislature enacted House Bill 14-1186 which added specific patient record copy cost fees to the statute. The bill also added statutory language that overrides the Division's rule regarding exemption from fees if the medical records being requested are for the sole purpose of continuing medical care. Specifically, the general assembly expressed their intent to establish in statute maximum reasonable fees that may be charged to third parties, which encompasses anyone other than the patient or the patient's personal representative.

Additionally, the Office of Legislative Legal Services, in conducting their routine review of all newly adopted regulations, determined that the Board did not have the authority to adopt a rule that allowed an exemption from fees in certain circumstances because the statute specifies that health care facilities can charge the reasonable costs of responding to certain types of medical record requests such as for X-rays, mammograms, CT scans, MRIs or other film when “a copy is not sufficient for diagnostic or other treatment purposes.”

**STATEMENT OF BASIS AND PURPOSE  
AND SPECIFIC STATUTORY AUTHORITY**

For Rules Pertaining to the Standards for Hospitals and Health Facilities  
6 CCR 1011, Chapter II, General Licensure Standards, Part 5  
Access to Patient Medical Records

August 20, 2014

**Basis and Purpose:**

House Bill 14-1186 added statutory language that overrides the Division's rule regarding exemption from fees if the medical records are being requested for the sole purpose of continuing medical care. Specifically, the general assembly expressed their intent to establish in statute maximum reasonable fees that may be charged to third parties, which encompasses anyone other than the patient or the patient's personal representative. Additionally, the Office of Legislative Legal Services, in conducting their routine review of all newly adopted regulations, determined that the Board did not have the authority to readopt one sentence of the January 2014 rule changes that allowed an exemption from fees in certain circumstances. Their opinion was based upon the fact that the statute specifies that health care facilities can charge the reasonable costs of responding to certain types of medical record requests such as for X-rays, mammograms, CT scans, MRIs or other film when "a copy is not sufficient for diagnostic or other treatment purposes."

**These rules are promulgated pursuant to the following statutes:**

Section 25-1.5-103, C.R.S. (2014)

Section 25-1-801, C.R.S. (2014).

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SUPPLEMENTAL QUESTIONS

**Is this rulemaking due to a change in state statute?**

☒ Yes

☐ No

**Is this rulemaking due to a federal statutory or regulatory change?**

☐ Yes

☒ No

**Does this rule incorporate materials by reference?**

☐ Yes

☒ No

**Does this rule create or modify fines or fees?**

☐ Yes

☒ No

## REGULATORY ANALYSIS

For Rules Pertaining to the Standards for Hospitals and Health Facilities  
6 CCR 1011, Chapter II, General Licensure Standards, Part 5  
Access to Patient Medical Records  
August 20, 2014

1. **A description of the classes of persons who will be affected by the rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the rule.**

The classes of persons who will be primarily affected by the proposed amendment are health care providers who request copies of patient medical records solely for the purpose of providing continuing treatment to that patient.

2. **To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected class of persons.**

The probable quantitative and qualitative impact of the proposed amendment is impossible to determine at this time.

3. **The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

The Division does not anticipate any significant additional costs will be incurred by it or any other agency with the exception of any state owned or operated health care providers that will now be required to pay for copies of patient medical records that are deemed necessary for continuing treatment of a patient.

4. **A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.**

Inaction is not an option as it would result in violation of newly adopted statutory language.

5. **A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

The determination is that there is no less costly or less intrusive method for achieving the purpose of the amendment that strikes rule language that is contrary to the newly adopted statutory language.

6. **A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.**

No other alternatives are appropriate at this time since the proposed amendment is necessary to strike a rule provision that is contrary to the newly adopted statutory language regarding patient record copy costs.

7. **To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.**

The short-term consequence is that licensed health care entities and consumers must acquaint themselves with the revised regulation. The long-term consequences are unknown at this time.

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**Health Facilities Regulation Division**

**STANDARDS FOR HOSPITALS AND HEALTH FACILITIES**

**CHAPTER II – GENERAL LICENSURE STANDARDS**

**6 CCR 1011-1 Chap 02**

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**Part 5. ACCESS TO PATIENT MEDICAL RECORDS**

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~~5.2.3.4 RESERVED. A licensed health care entity shall charge no fees for a medical records request received from another licensed health care provider or individual regulated pursuant to 25-1-802(1), C.R.S., when the request is solely for the purpose of providing continuing medical care to a patient.~~

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